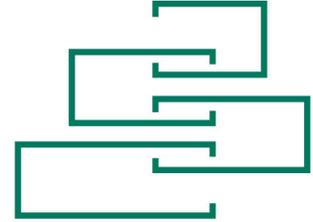


Homeless Persons' Legal Service

Legal help for the homeless and those at risk of homelessness
A joint initiative of the Public Interest Advocacy Centre Ltd
and the Public Interest Law Clearing House Inc



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AUSTRALIAN LAW REFORM COMMISSION – FAMILY VIOLENCE AND COMMONWEALTH LAWS

SOCIAL SECURITY

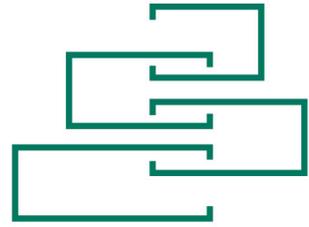
ISSUES PAPER 39 (IP 39)

15 April 2011

Louis Schetzer
Policy Officer
Homeless Persons' Legal Service
Public Interest Advocacy Centre

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Introduction

Homeless Persons' Legal Service

In 2004, following an extensive consultation process, the Homeless Persons' Legal Service (**HPLS**) was established by the Public Interest Advocacy Centre (**PIAC**) and the Public Interest Law Clearing House (**PILCH**) NSW.¹ HPLS is largely funded by the NSW Public Purpose Fund with the support of the NSW Attorney General.

HPLS provides free legal advice and ongoing representation to people who are homeless or at risk of homelessness. It operates ten clinics on a roster basis at welfare agencies in the greater Sydney area.² These agencies provide direct services, such as food and accommodation, to people in housing crisis. The clinics are co-ordinated by HPLS and staffed by lawyers acting pro bono from PILCH members.³ Since its launch in May 2004, HPLS has provided advice to over 5,000 clients.

PIAC is solely responsible for the content of this submission.

PIAC and HPLS's work on family violence and homelessness

Rough Living: Surviving violence and homelessness

In late 2009, PIAC commissioned Dr Catherine Robinson to conduct a qualitative research project on the experiences of violence among people who are currently rough sleeping. The resulting report was *Rough Living: Surviving violence and homelessness*.⁴

¹ Further information about PIAC and PILCH NSW is provided as Appendix A to this document.

² The clinics are hosted by the following welfare agencies: Edward Eagar Lodge (Wesley Mission), Matthew Talbot Hostel (St Vincent de Paul Society), Newtown Mission in Partnership with Newtown Neighbourhood Centre, Norman Andrews House (Uniting Care), Parramatta Mission (Uniting Church), Streetlevel Mission (Salvation Army), The Station, Vincentian House (St Vincent de Paul Society), Wayside Chapel (Uniting Church) and Women's and Girls' Emergency Centre.

³ The following PILCH NSW members provide lawyers on a *pro bono* basis to HPLS to provide legal services through the clinics: Allens Arthur Robinson, Baker & McKenzie, Corrs Chambers Westgarth, Dibbs Barker, HWL Ebsworth, Gilbert + Tobin, Henry Davis York, Legal Aid NSW, Minter Ellison, Norton Rose and Thomsons Lawyers.

⁴ Robinson, Catherine (2010), *Rough Living, Surviving Violence and Homelessness*, UTS Press, Sydney, 2010.

The project adopted a 'life-history approach' that examined 12 individuals currently sleeping rough in the Sydney region and their experiences of violence both prior to and during their periods of homelessness. Six men and six women aged between 31 and 62 years were invited to take part in interviews. Most had experienced homelessness off and on over their life course, including extensive periods of rough sleeping for up to 10 years, with periods of homelessness, including rough sleeping, beginning as early as age seven.

During the course of the research, the enduring impacts of childhood abuse and trauma became apparent. The report found considerable links between homelessness, child-abuse and trauma. These findings are confirmed by other research that reveals extremely high rates of childhood sexual, emotional and physical abuse experienced by those who become homeless.

A copy of the report *Rough Living: Surviving violence and homelessness*, is included as part of this submission. The report has informed this response to the ALRC Issues Paper 39.

Violence at home – precipitating homelessness

Studies in Australia and internationally have consistently documented that people experiencing homelessness report a horrendous and disproportionate level of victimisation, including repeated experiences of childhood abuse, domestic and family violence.⁵ Previous research has clearly documented the extremely high rates of childhood sexual and physical abuse experienced by those who become homeless. In combination with lack of care in the home, childhood physical and sexual abuse has been established as a powerful predictor of adult homelessness.⁶ Young homeless people commonly report experiences of family physical and sexual abuse.⁷ Studies have revealed that over 70% of young homeless women and 30% of young homeless men can be

⁵ See, for example, Buhrich, N., Hodder, T., and Teesson, M., 2000. 'Lifetime prevalence of trauma among homeless people in Sydney', *Australian Journal of Psychiatry* 34, 6: 963-966; Larney, S., Conroy, E., Mills, K., Burns, L., and Teesson, M., 2009. 'Factors Associated with Violent Victimization Among Homeless Adults in Sydney, Australia', *Australian and New Zealand Journal of Public Health* 33, 4: 347-351; Jasinski, J., Wesley, J., Mustaine, E., and Wright, J., 2005. *The Experience of Violence in the Lives of Homeless Women: A Research Report*, National Institute of Justice, <http://www.ncjrs.gov> (accessed 1 April, 2011); North, C., Smith, E., and Spitznagel, E., 1994. 'Violence and the Homeless: An Epidemiologic Study of Victimization and Aggression', *Journal of Traumatic Stress*, 7, 1: 95-110; Taylor, K., and Sharpe, L., 2008. 'Trauma and Post-traumatic Stress Disorder among Homeless Adults in Sydney', *Australian and New Zealand Journal of Psychiatry*, 42, 3: 206-213.

⁶ Herman, D., Susser, E., Struening, E. and Link, B., 1997. 'Adverse Childhood Experiences: Are They Risk Factors for Adult Homelessness', *American Journal of Public Health* 87, 2: 249-255.

⁷ See for example, Downing-Orr, K., 1996. *Alienation and Social Support: A Social Psychological Study of Homeless Young People in London and Sydney*, Aldershot: Ashgate; Hatty, S., Davis, N., and Burke, S., 1996. 'No Exit: Violence, Gender and the Streets'. In *International Victimology: Selected papers from the 8th International Symposium*, ed. C. Summer, M. Israel, M. O'Connell and R. Sarre, 47-61. Canberra: Australian Institute of Criminology, at p. 50; Janus, M., Archambault, F., Brown, S., and Welsh, L., 1995. 'Physical Abuse in Canadian Runaway Adolescents', *Child Abuse and Neglect*, 19, 4: 433-447; Rew, L., Taylor-Seehafer, M., and Fitzgerald, M., 2001. 'Sexual Abuse, Alcohol and Other Drug Use, and Suicidal Behaviours in Homeless Adolescents', *Issues in Comprehensive Pediatric Nursing*, 24, 4: 225-240.

expected to be survivors of sexual abuse and that over 70% of young homeless men and 30% of young homeless women can be expected to be survivors of physical abuse.⁸

Likewise, research evidence suggests that domestic violence and family violence are common in the lives of those who also experience homelessness. In particular, domestic and family violence have been shown to be overwhelmingly central to women's trajectories into homelessness.⁹ Witnessing domestic violence during childhood in the family homes was a common precursor to homelessness for most participants in the *Rough Living* study. Of those who participated in the project:

- Eight participants described childhoods marked by their parents' relationship breakdowns and separation, addiction, mental illness, housing instability, and inability and unwillingness to care for their children.
- Seven participants reported witnessing their parents' domestic violence and five were also exposed to the physical and sexual abuse of their siblings.
- Eleven participants reported childhood sexual and physical abuse perpetrated mostly by parents and step-parents but also by siblings. This included sexual abuse, physical torture, physical violence with weapons, physical bashings by punching, slapping and kicking, and neglect.
- Sexual and physical abuse was accompanied by emotional abuse which usually revolved around participants being told they were useless or unwanted, being threatened with further harm, including murder, and receiving punishment if they questioned abuse or revealed abuse outside the family.

The report found that several participants escaped childhood homes of abuse and entered into long trajectories of transient housing and homelessness interspersed with periods of institutionalisation in children's homes and prison. In these contexts, they continued to be both subjected to, and to witness, multiple episodes of violence. The periods in which participants were able to establish settled home lives were often as dangerous and chaotic as the childhood homes they had endured and eventually dissolved due to violence, relationship breakdown and drug and alcohol abuse. Women participants in particular described enduring violent intimate relationships in the context of homelessness.

The study found that violence occurring both outside of, and during homelessness (including childhood and adult experiences of violence in a domestic setting) underwrote a chain of expanding disadvantage which served to entrench homelessness. The study found that the recounted experiences of childhood physical and sexual abuse in the home placed the participants at extremely high risk of post-traumatic stress disorder, anxiety and depression, suicide ideation and self-harm, negative cognitive and health outcomes, alcohol and drug use disorders, anti-social and self-destructive behaviours, social isolation, interpersonal problems, running away and early

⁸ Thrane, L., Hoyt, D., Whitbeck, L., and Yoder, K. (2006), 'Impact of family abuse on running away, deviance, and street victimisation among homeless rural and urban youth', *Child Abuse and Neglect*, vol. 30, no. 10, 1117-28; Whitbeck, L., Hoyt, D., and Bao, W., 2000. 'Depressive symptoms and co-occurring depressive symptoms, substance abuse, and conduct problems among runaway and homeless adolescents', *Child Development* 71, 3: 721-32.

⁹ Tually, S., Faulkner, D., Cutler, C., and Slatter, M., 2008. *Women, Domestic and Family Violence and Homelessness: A Synthesis Report*, Adelaide: Flinders Institute for Housing, Urban and Regional Research, at 13.

independence. All of these factors have clearly been linked to the future likelihood of involvement in violence with partners and peers, of sexual and physical revictimisation, and also of homelessness.¹⁰

Several participants recounted their first experiences of homelessness as incidents where they ran away from home, fleeing abuse. Participants indicated that they became homeless as a result, from as young as seven years old, were identified by police, and were then placed in institutional or foster care. These accounts indicated that various authorities were aware of participants' ongoing abuse and of the domestic violence that their mothers were also experiencing.

The life stories collected for the project are examples of the cyclical way in which childhood experiences of violence feed homelessness. The range of risk factors associated with eventual experiences of homelessness come on top of existing vulnerabilities to a range of negative outcomes, for example, continued partner violence, physical and sexual assault, post-traumatic stress disorder and substance abuse. The study found that homelessness, as participants experienced it, significantly eroded most of the protective factors that might mediate both the traumatic impacts of childhood violence and the related vulnerability to revictimisation.

The difficulties in disclosing family violence

During the interviews for the study, participants made it clear that they had learned to stay silent about violent victimisation from a very young age, and that this was a silence reinforced throughout their lives in multiple contexts. The study found that they were taught – often through further actual or threatened violent victimisation – that speaking out against victimisers or revealing victimisation – even unintentionally – had negative consequences and was often pointless. Through this silencing, some participants indicated that they had negative interactions with service providers, which reinforced the sense of being misunderstood, being 'beyond' help, and being left on their own with a heavy burden of overwhelming issues to carry around.

The study concluded that violence needs acknowledgement as an issue key to the causation and perpetuation of homelessness and to the experience of high and complex needs in the context of homelessness. It should be clearly recognised as an issue likely to underpin substance abuse and poor mental health, both of which negatively impact on the capacity to access health, housing, and support services, ironically in the context in which they are most needed.

The study endorses the development of trauma-informed care in the context of homelessness, including sensitively implemented violence screening. Trauma-informed care is an approach which takes as its starting point the likely presence and comprehensive, long-term effects of violent victimisation and the concern to practically integrate best-knowledge of the physical, emotional, psychological and physiological impacts of trauma in the way that service staff understand and engage with service users.

¹⁰ Larney, Conroy, Mills (2009), above n 5, 350; Thrane, et al (2006), above n 8, 1125; Tyler, K., Melander, L., and Noel, H., 2009. 'Bidirectional Partner Violence Among Homeless Young Adults: Risk Factors and Outcomes', *Journal of Interpersonal Violence*, 24, 6: 1014-1035, at 1030-1; Taylor and Sharpe (2008), above n 5 above, 211; Tyler, K., Hoyt, D., Whitbeck, L., and Cauce, A., 2001. 'The impact of childhood sexual abuse on later sexual victimization among runaway youth', *Journal of Research on Adolescence*, 11, 2: 151-176, at 167-8.

Response to questions in the Issues Paper

Based on the findings of the study *Rough Living: Surviving violence and homelessness*, the HPLS makes the following responses to selected questions raised in the Issues Paper.

Question 1: Should the *Social Security Act 1991* (Cth) and/or the *Social Security (Administration) Act 1999* (Cth) be amended to insert a definition of ‘family violence’ consistent with that recommended by the ALRC/NSWLRC in *Family Violence—A National Legal Response* (ALRC Report 114)?

Research has shown that over 70% of young homeless women and 30% of young homeless men can be expected to be survivors of sexual abuse, while 70% of young homeless men and 30% of young homeless women can be expected to be survivors of physical abuse.¹¹

The HPLS submits that there needs to be a consistent definitional approach across Commonwealth legislation, to ensure that victims of family violence have certainty that their experiences will be treated consistently across all Commonwealth laws. Given the strong nexus between experiences of family violence and homelessness, and the need for people at risk of homelessness to be able to access income support, social security and child support, it is important that such people have certainty that their experiences of family violence are treated in the same way under different Commonwealth legislative frameworks.

HPLS submits that the definition of ‘family violence’ consistent with that recommended by the ALRC/NSWLRC in *Family Violence—A National Legal Response* (ALRC Report 114) is sufficiently encompassing of the elements of family violence, and is the appropriate definition to be applied consistently across Commonwealth legislation.

Question 2: In what circumstances should Centrelink staff be required to inquire about the existence of family violence when dealing with Centrelink customers?

As noted above, during the interviews for the *Rough Living* study, participants made it clear that they had learned to stay silent about violent victimisation from a very young age, and that this was a silence reinforced throughout their lives in multiple contexts. The study found that they were taught – often through further actual or threatened violent victimisation – that speaking out against victimisers or revealing victimisation (even unintentionally) had negative consequences and was often pointless. Through this silencing, some participants indicated that they had negative interactions with service providers, which reinforced the sense of being misunderstood, being ‘beyond’ help, and being left on their own with a heavy burden of overwhelming issues to carry around.¹²

¹¹ Lisa Thrane, Dan Hoyt, Les Whitbeck, and Kevin Yoder, ‘Impact of Family Abuse on Running Away, Deviance, and Street Victimization among Homeless Rural and Urban Youth’, (2006) *Child Abuse and Neglect*, 30 10, 117.

¹² Robinson, Catherine (2010), above n 4, 50-51, 56-57.

HPLS recommends that Centrelink staff should employ a principle of trauma-informed care, as recommended in the *Rough Living* study,¹³ which takes as its starting point the likely presence and long-term effects of family violence. In addition, as victims of family violence are often reluctant to disclose their experiences of family violence, their eligibility for Centrelink payments may be affected. Accordingly, HPLS submits that Centrelink staff should inquire with appropriate sensitivity about the existence of family violence when dealing with Centrelink customers. This would also require appropriate training for Centrelink in relation to the provision of services which prioritise trauma-informed care.

Question 3: Should Centrelink application forms (including electronic forms), correspondence and telephone prompts directly seek information about family violence? For example, should a question about family violence be included on all forms?

As indicated in the response to Question 2, victims of family violence are often reluctant to disclose their experiences of family violence. HPLS submits that all Centrelink forms, correspondence and telephone prompts directly seek information about family violence. This will facilitate victims of family violence overcoming their reluctance to disclose their experiences.

Question 4: Where family violence is disclosed or identified, do Centrelink staff notify victims effectively about eligibility criteria for payments and exemptions, including any corresponding exemptions and requirements for child support?

HPLS is concerned that victims of family violence may not be aware of eligibility criteria for payments and exemptions. Accordingly, HPLS submits that Centrelink staff should routinely notify customers of these criteria and exemptions, where family violence has been disclosed. This is consistent with the principle of trauma-informed care, as recommended in the *Rough Living* study¹⁴, which takes as its starting point the likely presence and long-term effects of family violence.

Question 5: In what circumstances, if any, should information about family violence be shared between Centrelink and other government agencies, such as the Child Support Agency?

As indicated in the response to Question 2, victims of family violence are often reluctant to recount their experiences. This is problematic particularly where there may be numerous government agencies from which they are seeking assistance. Accordingly, HPLS considers that it is appropriate, subject to the informed consent of the customer, for Centrelink to share the fact that the customer has reported experiencing family violence with other government agencies which may provide assistance, such as the Child Support Agency. HPLS submits that such disclosure should be in accordance with the *Privacy Act 1988* and the *National Privacy Principles*, and that the informed consent of the customer be obtained prior to disclosing the fact that the customer has reported experiencing family violence with other government agencies which may provide assistance.

¹³ Ibid 59-62.

¹⁴ Ibid 59-62.

In addition, Centrelink and the Child Support Agency should inform all customers about eligibility criteria and exemptions relevant to people experiencing family violence.

Question 7: Are Centrelink staff and social workers able to access information about persons who have identified themselves as a victim of family violence as to whether they have obtained a protection order or similar? Should Centrelink staff and social workers be able to access the national register recommended in *Family Violence—A National Legal Response*, Report 114 (2010)?

HPLS submits that Centrelink staff and social workers should be able to access the national register, but only once family violence has been identified for that customer. This will provide supporting evidence on the existence of family violence where contact with a partner or a parent would not be appropriate.

Question 9: When contact with a partner or a parent is not appropriate due to the possibility of family violence, on what information should family violence be assessed?

As indicated in the response to Question 7, where contact with a partner or a parent is not appropriate due to the possibility of family violence, Centrelink staff and social workers should be able to access the national register recommended in *Family Violence – A National Legal Response*, Report 114 (2010).

Question 10: Are Centrelink customers aware that Centrelink may decide not to contact partners or parents if the customer is a victim of family violence?

HPLS is concerned that many Centrelink customers may be reluctant to disclose that they have experienced family violence out of fear that partners or parents may be contacted by Centrelink. Accordingly, HPLS submits that customers should be routinely informed by Centrelink staff that Centrelink may decide not to contact partners or parents if the customer is a victim of family violence.

Question 12: Should the criteria in s 4 of *Social Security Act 1991* (Cth) for determining whether a person is a ‘member of a couple’ be amended clearly to take into account the existence and effect of family violence?

Section 4 of the *Social Security Act* includes criteria to assist in deciding whether a person is a member of a couple. However, this criteria does not specifically refer to the existence and effect of family violence. While the *Guide to Social Security Law* includes evidence of domestic violence as indicating the absence of commitment and/or emotional support, it is submitted that this does not give adequate weight to the existence of family violence in determining whether a person is a member of a couple. HPLS submits that s 4 should be amended specifically to include as a relevant criterion, the existence and effect of family violence.

Studies in Australia and internationally have consistently documented that people experiencing homelessness report a horrendous and disproportionate level of victimisation, including repeated experiences of domestic and family violence.¹⁵

Likewise, research evidence suggests that domestic violence and family violence are common in the lives of those who also experience homelessness. In particular, domestic and family violence have been shown to be overwhelmingly central to women's trajectories into homelessness.¹⁶ Witnessing domestic violence during childhood in the family homes was a common precursor to homelessness for most participants in the *Rough Living* study. Amending s 4 of the *Social Security Act 1991* specifically to include as a relevant criterion, the existence and effect of family violence (defined in the way that was recommended by the ALRC/NSWLRC in *Family Violence—A National Legal Response* (ALRC Report 114)), will help to address a significant barrier for victims of domestic violence to accessing social security payments. A failure to be able to access such payments will compound the risk of homelessness already confronted by victims of family violence.

Question 14: In practice, is family violence adequately considered in determining separation under one roof? If not, how should family violence be taken into consideration?

HPLS submits that both the *Social Security Act* and the *Guide to Social Security Law* should provide family violence as an example of where people may be living separately and apart under one roof. In this way, decision makers will be prompted to consider family violence when making a determination about separation under one roof. The HPLS submits that without clear articulation of family violence as an example of people living separately and apart under one roof, there is a risk that victims of family violence may be forced into homelessness, in order to receive Centrelink payments.

As indicated in the response to Question 12, the experience of domestic violence and family violence is common in the lives of those who experience homelessness. A clear articulation of family violence as an example of people living separately and apart under one roof in both the *Social Security Act* and the *Guide to Social Security Law* will assist in ensuring that family violence is adequately considered in determining separation under one roof, to facilitate access to Centrelink payments.

¹⁵ See, for example, Buhrich, N., Hodder, T., and Teesson, M., 2000. 'Lifetime prevalence of trauma among homeless people in Sydney', *Australian Journal of Psychiatry* 34, 6: 963-966; Larney, S., Conroy, E., Mills, K., Burns, L., and Teesson, M., 2009. 'Factors Associated with Violent Victimization Among Homeless Adults in Sydney, Australia', *Australian and New Zealand Journal of Public Health* 33, 4: 347-351; Jasinski, J., Wesley, J., Mustaine, E., and Wright, J., 2005. *The Experience of Violence in the Lives of Homeless Women: A Research Report*, National Institute of Justice, <http://www.ncjrs.gov> (accessed 1 April, 2011); North, C., Smith, E., and Spitznagel, E., 1994. 'Violence and the Homeless: An Epidemiologic Study of Victimization and Aggression', *Journal of Traumatic Stress*, 7, 1: 95-110; Taylor, K., and Sharpe, L., 2008. 'Trauma and Post-traumatic Stress Disorder among Homeless Adults in Sydney', *Australian and New Zealand Journal of Psychiatry*, 42, 3: 206-213.

¹⁶ Tually, S., Faulkner, D., Cutler, C., and Slatter, M., 2008. *Women, Domestic and Family Violence and Homelessness: A Synthesis Report*, Adelaide: Flinders Institute for Housing, Urban and Regional Research, at 13.

Question 19: In what ways might access to Youth Allowance, Disability Support Pension and Pensioner Education Supplement be improved for victims who have left their home because of family violence? For example, does the criterion for a person to be considered ‘independent’ adequately take into account the existence of family violence? Should family violence be expressly referred to in this context?

As noted above, in the *Rough Living* study:

- Eight participants described childhoods marked by their parents’ relationship breakdowns and separation, addiction, mental illness, housing instability, and inability and unwillingness to care for their children.
- Seven participants reported witnessing their parents’ domestic violence and five were also exposed to the physical and sexual abuse of their siblings.
- Eleven participants reported childhood sexual and physical abuse perpetrated mostly by parents and step-parents but also by siblings. This included sexual abuse, physical torture, physical violence with weapons, physical bashings by punching, slapping and kicking, and neglect.
- Sexual and physical abuse was accompanied by emotional abuse which usually revolved around participants being told they were useless or unwanted, being threatened with further harm, including murder, and receiving punishment if they questioned abuse or revealed abuse outside the family.

Several participants recounted their first experiences of homelessness as incidents where they ran away from home, fleeing abuse. Participants indicated that they became homeless as a result, from as young as seven years old, were identified by police, and were then placed in institutional or foster care.¹⁷

HPLS submits that while the criteria for determining whether a person is regarded as independent refers to extreme family breakdown, and also to serious risk of physical or mental well-being due to violence, sexual abuse or other similar exceptional or unreasonable circumstances, there remains a need for express reference to family violence. Moreover, the *Guide to Social Security Law* indicates that family breakdown must be extreme, and that the existence of ongoing conflict alone is insufficient grounds.

HPLS submits that the nature of family violence is broad and encompassing. The preferred definition of family violence, which is the subject of the response to Question 1, refers also to economic abuse, emotional abuse, stalking, deprivation of liberty, damage to property, and causing a child to be exposed to violent or abusive behavior. Unless express reference is made to family violence there is a risk that some of these elements of family violence will not be considered by decision-makers as sufficiently extreme to be considered in the determination of whether a person is independent.

¹⁷ Robinson, Catherine (2010), above n 4, 10, 31

Question 21: When contact with a young person’s parent is not appropriate, due to the possibility of family violence, how should claims about family violence be assessed?

As indicated in the responses to Questions 7 and 9 above, where contact with a parent is not appropriate due to the possibility of family violence, Centrelink staff and social workers should be able to access the national register recommended in *Family Violence – A National Legal Response*, Report 114 (2010). In addition, any available documentary evidence from the relevant State child protection agency should also be considered in assessing claims about family violence.

As indicated in the response to Question 19, several participants in the *Rough Living* study recounted their first experiences of homelessness as incidents where they ran away from home, fleeing abuse. It is essential that young people who leave home due to experiences of family violence, are able to access social security payments without barriers. HPLS recommends that Centrelink staff should employ a principle of trauma-informed care, as recommended in the *Rough Living* study,¹⁸ which takes as its starting point the likely presence and long-term effects of family violence. Such an approach would accept the existence of the reported experience of family violence, without the need for supporting documentary evidence.

Question 22 In what ways, if any, should the Guide to Social Security Law be amended in relation to the ‘continuous support’ criteria to improve the safety of victims of family violence? For example, should specific provisions be made for victims of family violence who need to supply asset and income details from a parent?

The relationship between family violence and young people leaving home and entering into homelessness was exemplified by the personal accounts provided by participants in the *Rough Living* study. Several participants recounted their first experiences of homelessness as incidents where they ran away from home, fleeing abuse. Participants indicated that they became homeless as a result.

HPLS considers it unreasonable for a young person who has left home due to family violence, to be required to provide asset and income details from a parent the young person is not residing with, or with whom the young person may have had minimal contact. Such a requirement may leave a young person without access to Youth Allowance, placing the young person at risk of being unable to secure safe accommodation, or being forced to return to a home in which she or he is exposed to family violence.

Question 23: Should the requirement of parental consent for a person under 18 years of age to be paid directly be waived for victims who have left home because of family violence?

As indicated in the responses to Questions 19, 21 and 22, several participants in the *Rough Living* study recounted their first experiences of homelessness as incidents where they ran away from home, fleeing abuse. In light of this, HPLS strongly supports waiving the requirement of parental consent for a person under the age of 18 to be paid directly, where the young person has left home because of family violence.

¹⁸ Ibid 59-62.

Question 24: Do the provisions regarding the requirement for original proof of identity documents and tax file numbers create barriers for victims of family violence? Should further measures be put in place to ensure that victims of family violence who have had to leave their homes because of family violence are not required to return to the home or have contact with an abusive family member?

HPLS submits that victims of family violence should be automatically exempt from providing original proof of identity. A person who has been forced into unstable accommodation due to family violence may not have sufficient proof of identity in order to receive a social security payment, and may be exposed to risk of harm if they believe they are required to return to the home in order to obtain such proof of identity. Obtaining and retaining possession of identification documentation is a significant issue for homeless people. As many homeless people do not have access to adequate storage facilities, they are more likely than other members of the community to misplace their identification documents or to have them stolen.

Inability to receive social security due to an inability to provide proof of identity creates further obstacles for victims of family violence to secure stable and secure accommodation.

Question 30: In what ways, if any, can information about and access to Crisis Payment be improved for victims of family violence? For example, should Crisis Payment be ‘wrapped up’ with Special Benefit?

HPLS submits that there is still an important purpose for the Crisis Payment, particularly for those who are in severe financial hardship because of family violence. However, HPLS submits that there is a need for increased awareness of the availability of the Crisis Payment among those who are experiencing family violence. Increased visibility through brochures and letters to inform Centrelink customers will assist. However, there is a further need to ensure that communication strategies to raise awareness of the Crisis Payment target agencies which provide services to people who are homeless or at risk of homelessness, as well as agencies which provide services to people who experience family violence.

During the interviews for the *Rough Living* study, participants made it clear that they had learned to stay silent about violent victimisation from a very young age, and that this was a silence reinforced throughout their lives in multiple contexts. Through this silencing, some participants indicated that they had negative interactions with service providers, which reinforced the sense of being misunderstood, being ‘beyond’ help, and being left on their own with a heavy burden of overwhelming issues to carry around.¹⁹

The principle of trauma-informed care, as recommended in the *Rough Living* study²⁰, which takes as its starting point the likely presence and long-term effects of family violence, suggests that a comprehensive communications strategy to raise awareness of the Crisis Payment is warranted. Targeting services which are already being accessed by people who are experiencing homelessness, or people who have experienced family violence, would be an effective part of such a communications strategy.

¹⁹ Ibid 57.

²⁰ Ibid 59-62.

Question 31: Should Crisis Payment be available to those who are otherwise ineligible for a social security pension or benefit but due to extreme circumstances of family violence are placed in financial hardship?

HPLS submits that people who are in financial hardship due to family violence should be able to access Crisis Payment, even if they are otherwise ineligible for a social security pension. As indicated in the response to Question 12, the experience of domestic violence and family violence is common in the lives of those who experience homelessness. Given the interrelatedness of experiences of family violence and homelessness, HPLS submits that people in financial hardship due to family violence are in urgent need of financial assistance, even in circumstances where their eligibility for social security pension is not certain.

Those escaping domestic or family violence are seldom able to take personal belongings with them and subsequently must purchase clothing, emergency food and personal hygiene products, shoes and accommodation. The small amount paid leaves the person falling far short of achieving financial independence and creates the danger that they may view returning to a violent situation as an easier alternative than struggling on this small amount. The situation is worse for those fleeing domestic violence with dependent children.

A Crisis Payment may assist such a person who would otherwise be forced into unstable, unsafe or insecure accommodation, or avoid having to return to an unsafe domestic environment.

Question 32: Do claim periods and eligibility criteria for Crisis Payments adequately reflect the breadth and nature of family violence?

HPLS notes the concerns articulated in the Issues Paper regarding the operation of Crisis Payments, including:

- the definitions of ‘family member’ and ‘home’ that may exclude certain persons and situations of family violence;
- requiring claim to be made within seven days after the ‘extreme circumstance’, and understanding of when the extreme circumstance is said to occur may be too onerous given the effects of family violence for victims of family violence;
- requiring the person alleging family violence to have lived with the victim immediately before either the victim leaves to home or the person using family violence is removed from the home; and
- the restriction that only four payments can be made in a 12 month period may be insufficient for victims of family violence.

HPLS submits that Crisis Payment should be available to any person who has experienced financial hardship as a result of family violence as defined in accordance with the recommendation made by the *ALRC/NSWLRC in Family Violence—A National Legal Response* (ALRC Report 114). HPLS also submits that where a situation of family violence has been identified as the ‘extreme circumstance’, the requirement that the claim be made within seven days of the circumstance should be waived. HPLS submits that the nature of family violence is broad and encompassing. The preferred definition of family violence, which is the subject of the response to Question 1,

refers also to economic abuse, emotional abuse, stalking, deprivation of liberty, damage to property, and causing a child to be exposed to violent or abusive behavior.

Family violence can be ongoing and varying in its intensity. To locate the experience of family violence to a single instance of 'extreme circumstance' may be too onerous. In addition, as suggested in the *Rough Living* study, victims of family violence are often reluctant to report that their experiences, having been conditioned to silence. Participants in the study made it clear that they had learned to stay silent about violent victimisation from a very young age, and that this was a silence reinforced throughout their lives in multiple contexts. Through this silencing, some participants indicated that they had negative interactions with service providers, which reinforced the sense of being misunderstood, being 'beyond' help, and being left on their own with a heavy burden of overwhelming issues to carry around.²¹ Placing a time limit of seven days following an incident may therefore present as a significant barrier for victims of family violence in accessing Crisis Payment.

HPLS also submits that the requirement for the person using family violence to have lived with the victim immediately before either the victim leaves to home or the person using family violence is removed from the home, is also too onerous. A person experiencing family violence may already be experiencing homelessness and instability in their living arrangements, meaning that they are at times returning to the domestic environment in which they are experiencing violence on an intermittent basis. In addition, the person who is the perpetrator of the violence may be a regular visitor to their usual place of accommodation, but may not be considered to be living at that dwelling. According to the *Rough Living* Study, participants reported that

... in any stretches of settled homed life which sometimes also occurred, they again, however, were both subjected to, and witnessed, multiple episodes of violence right into adulthood. Where participants were able to establish settled homed lives, these were often as dangerous and chaotic as the childhood homes they had endured and eventually dissolved due to violence, relationship breakdown and drug and alcohol abuse.²²

Women participants in particular described enduring violent intimate relationships in the context of homelessness as well.²³

HPLS submits that experiences of family violence often involve situations where the perpetrator and the victim are not living permanently under the one roof.

Question 33: What evidence is, or should, be necessary to determine whether family violence amounts to an extreme circumstance for the purpose of Crisis Payment?

HPLS submits that any reported allegation of family violence should be considered as an 'extreme circumstance', and therefore eligible for Crisis Payment. HPLS submits that this approach is consistent with a trauma-informed care approach to administering Crisis Payment. The principle of

²¹ Ibid 57.

²² Ibid 14, 40-41.

²³ See Annika's story, Ibid17-19.

trauma-informed care, as recommended in the *Rough Living* study²⁴, takes as its starting point the likely presence and long-term effects of family violence in the lives of people experiencing homelessness or at risk of homelessness.

Question 34: Do the provisions for Rent Assistance in the *Social Security Act 1991* (Cth) adequately address the situation where a person using family violence defaults on mortgage repayments on the house in which the victim is living? Should the definition of ‘rent’ in s 13(2) of the *Social Security Act 1991* (Cth) expressly include mortgage repayments where family violence is an issue?

Based on the documented causal relationship between experiences of family violence and homelessness (see response to Question 12), HPLS submits that people on low income who have experienced family violence, and default on their mortgage payments are equally vulnerable to homelessness as those who rent. At present, people on low income who have a mortgage are not able to access Rent Assistance. Accordingly, HPLS recommends that the definition of ‘rent’ in s13(2) of the *Social Security Act 1991* be amended to expressly include mortgage payments, where family violence has been identified.

Question 35: In practice, are Centrelink customers aware of, and do Centrelink customers make use of, the option to have their payments made weekly? In practice, if requested, are victims of family violence provided with weekly payments?

HPLS is concerned that many Centrelink customers may not be aware of the option to have their payments made weekly. Given the strong connection between experiences of family violence and the risk of homelessness, as indicated in the response to Question 12, HPLS submits that all Centrelink customers for whom family violence has been identified, should be routinely informed of the possibility of receiving weekly payments.

Question 36: Should victims of family violence who are receiving weekly payments be eligible to receive Crisis Payment?

The HPLS submits that the mere fact that a victim of family violence is in receipt of a weekly payment, should not disentitle that person to a Crisis Payment. Incidents of family violence may place that person in need of a Crisis Payment, regardless of the fact they are in receipt of a weekly payment. A victim of family violence who receives weekly payments may be required to change their accommodation arrangements urgently, following an incident of family violence, and may therefore be in need of a Crisis Payment. As indicated in the response to Question 32, participants in the *Rough Living* study indicated that even where they were able to establish a settled home environment, these were often disrupted and eventually dissolved due to violence, relationship breakdown and drug and alcohol abuse. Women participants in particular described enduring violent intimate relationships in the context of homelessness.²⁵

²⁴ Ibid 59-62.

²⁵ Ibid 14, 17-19, 40-41.

Question 37: Should family violence be an example of ‘exceptional and unforeseen circumstances’ in the Guide to Social Security Law when considering whether to make an urgent payment? Are the current payment arrangements—such as weekly payments—available to victims of family violence sufficient?

The *Guide to Social Security Law* states that a one-off urgent payment may be made to a third party on behalf of a social security recipient in exceptional and unforeseen circumstances, where it is necessary to alleviate immediate hardship to the recipient, such as where the recipient is required to change their place of residence because of family breakdown. However, the Guide does not refer to family violence as an exceptional and unforeseen circumstance.

The HPLS submits that this is a significant omission, given the interrelatedness of family violence to homelessness, which has been referred to in this submission (see response to Question 12), and that accordingly, family violence should be expressly referred to as an exceptional and unforeseen circumstance within the *Guide*, for the purposes of determining eligibility for an urgent payment.

Appendix A

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights;
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only, broadly-based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC receives funding from Industry & Investment NSW for its work on energy and water, and from Allens Arthur Robinson for the Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

The Public Interest Law Clearing House

The Public Interest Law Clearing House (PILCH) NSW was established in 1992 by the Law Society of New South Wales, the Public Interest Advocacy Centre and the private legal profession to respond to the growing incidence of unmet legal needs within the community. Underlying the establishment of PILCH is the commitment from lawyers that the provision of legal services on a *pro bono publico* ('for the public good') basis is intrinsic to legal professional responsibility.

The aims of PILCH are:

- to identify matters of public interest that warrant legal assistance *pro bono publico*;
- to identify the legal needs of non-profit organisations;
- to match disadvantaged and under-represented individuals, groups and non-profit organisations with a need for otherwise unavailable legal assistance with PILCH member firms and barristers;
- to utilise the diverse skills and resources of lawyers in a broad range of public interest matters;
- to expand the participation of private practitioners in the law reform process;
- to seek the integration of *pro bono* work with legal practice;

- to encourage co-operation between private practitioners and public interest lawyers: and
- to establish/coordinate public interest projects which seek systemic reform.

PILCH provides services to community organisations and individuals for free. It is a membership-based organisation with members including small, medium and large private law firms, corporate law departments, individual barristers, barristers' chambers, law schools, accounting firms, Legal Aid NSW, the Law Society of NSW, the NSW Bar Association, and PIAC.